IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.680 OF 2002

Balasaheb Ramchandra Gharpankar
R/o.Ningudge, Tal: Ajara, Dist: Kolhapur ...Appellant
Vs.
The State of Maharashtra ...Respondent

Mr.V.M.Thorat Advocate for the Appellant
Mrs. M.M.Deshmukh, A.P.P for the State

CORAM: SHRI D.G.DESHPANDE &
SMT. ROSHAN DALVI, JJ.
DATED: 13TH DECEMBER, 2006

JUDGMENT (PER SMT. ROSHAN DALVI, J.)

1. The Appellant is the son of the deceased. The Appellant is Indian Soldier and serving in the Indian Military at Amritsar. At the time of the offence, he was on leave and residing in the same village Ningudge, Ajara, Dist: Kolhapur where his father, the deceased victim lived.

2. The charge against the accused is of having committed murder of his father by assaulting him with a stick on both hands and chest and thereby causing his death punishable under Section 302 of the IPC. The offence is stated to have taken place at or before 6.30 a.m on 25th July, 2001 at the

house of the deceased in the above village.

3. The very first information about the crime was received from a Police Patil Baburao Kamble upon he having been informed about the dead body of the deceased lying in his house and having heard that he was murdered. Later the brother of the deceased one Prakash lodged the complaint.

4. The prosecution examined inter alia the wife of the deceased who first saw the dead body at about 6.30 a.m., the son of the deceased who saw the accused go out of the house of the deceased in the early morning hours, and neighbour of the deceased who saw the accused in the house of the deceased standing near the front door with a stick at about 3.30 a.m on that day when he went to urinate outside his house in the middle of the night, the panch witness showing the spot of the offence, the panch showing the arrest of the accused and the seizure of his banian, the panch showing the recovery of the stick used in the commission of the offence at the instance of the accused from behind the door of his inlaws' house where he lived at that time, the panch who made recovery of the clothes of the deceased and being corroborated by the inquest panchanama, the Chemical Analyser's report and the Post Mortem Report.

5. The prosecution case is not based on an eye witness account though the evidence of the wife of the deceased makes an attempt in that direction. That evidence being an improvisation over her earlier statement, cannot be taken into account. That evidence being not considered, the prosecution case largely rests with the **"last seen evidence"** along with the factum of the recovery and identification of the dead body of the deceased and the aforesaid corroborative material.

6. It is the case of the prosecution that there was a strong motive present to the mind of the accused in the commission of the crime. This motive has been shown to be the insistence of partitioning the family property including the house and the farm in favour of the accused during the life time of the deceased, which never came to be, until the death of the deceased. The prosecution has sought to show also that the accused was considerably hot tempered resulting in Chapter cases as well as criminal cases being filed against him by his family members as well as his wife respectively resulting in warrants being served upon him. It is an admitted fact that the accused was on leave from the Army at the relevant time. The prosecution has shown the factum of the death of the deceased by stick blows resulting

in as many as 5 fractures as evidenced from the P.M. Report.

7. It is contended on behalf of the Appellant that that there are no eye witnesses to the murder alleged to have taken place. Hence, the prosecution case is based entirely on circumstantial evidence and all the circumstances do not show a link/chain pointing unmistakably to the appellant/accused. The Advocate for the Appellant has argued that the learned trial Judge has based the conviction merely upon the evidence of the wife of the deceased and the recovery of the stick which was the weapon used in the offence. He contends that conviction merely on such basis cannot be sustained. This he has argued on the premise that the blood stained clothes as well as the stick which were recovered have not been properly sealed and hence the procedure which is mandatorily required to be followed is not followed. The seizure of the clothes as well as the stick cannot be relied upon by the prosecution. He has also argued that the “last seen together” theory of the prosecution is not credible. The case of the motive for the offence made out by the prosecution is sought to be rebutted on the ground that there was no lis between the parties on the date of the offence since the matter between the parties came to be withdrawn/settled. Hence, it is contended, that the motive for the offence is no more and consequently a mere

murder of the deceased and the factum of his dead body being found in his house cannot point to any act of the appellant/accused who lived in his in-laws' house albeit in the same village. The learned Advocate for the Appellant has drawn our attention to the evidence of the wife showing certain omissions which do not make her to be an eye witness, the evidence of two panchas which show the seized and recovered articles not correctly seized, the evidence in the cross examination showing that the criminal cases were settled between the father and the son, the deceased victim and the accused respectively, who came walking together from another village to the house of the deceased just the night prior to the commission of the offence showing the complete disappearance of the motive alleged by the prosecution.

8. The motive for the offence, the last seen together theory, the recovery of the articles and the clothes and the P.M. Report along with the inquest panchanama would therefore have to be considered.

9. The wife of the deceased P.W.6 has deposed that the accused was her eldest son. She had one other son Prakash (P.W.5) and two daughters, out of whom one lives in the same village. The accused used to quarrel with her husband

and her for demand of partition of the partition, being the house and field whenever he used to come on leave. He lived in the house of his wife in the same village. He was in the village on leave since 15 days before the date of the incident. He had come to their house two to four times to **"compromise the dates"**. He had date at Aajara.

10. She has deposed about what transpired a day before the date of incident. Her husband was not well. She told her son and daughter to take him to the hospital. Her husband insisted to go alone. She went to the field. She returned at 6.00 p.m. After dinner and other work she went to her married daughter's house. At 10.00 p.m her husband returned. He came to the house of the daughter. He told her that they should go to their house. She did not go to her own home. She stayed in her daughter's house because of fear that her son, the Accused, would again quarrel. Her husband, the deceased victim chose to go to his own house. This was though he told his wife that the Accused, his son would come home after consuming liquor. In the morning, P.W.6 returned to her house. She saw her husband lying on the floor in the kitchen and his hands were in broken condition. Her grand-daughter had come to the house after her. She called her daughter. Her daughter gave her father some water and called her brother Prakash. Prakash called

the Police Patil. The offence was registered.

11. So much of her evidence has not been disturbed in the cross examination.

12. This witness has however, sought to improve upon this evidence by stating that she saw the accused beating her husband when she came to her house on the next morning and that her husband was alive and told her that the Accused had beaten him and he would not survive. That portion has been omitted in the FIR and hence, cannot be considered.

13. Her testimony is therefore, not an eye witness account. Nevertheless her testimony shows the relationship between the parties and what transpired a day before the incident. Her cross examination is with regard to the relationship between the parties and the state of the injuries of the deceased.

14. Upon seeing the deceased in that condition, his daughter called her brother Praksh who has been examined as P.W.5. His examination-in-chief also mentions about the quarrel between the deceased and the accused on account of partition of the house and field property. It also shows that

certain warrants were issued upon the accused in Ajara Court. His evidence also shows about a chapter case filed against him by the accused, the case filed by the wife of the accused against him, and the fact that there was no case or notice with regard to the partition of the property. He saw his father lying dead in the kitchen of his house and his mother weeping near his father. He informed the Police Patil who in turn telephoned the Police Inspector and obtained the crime number on the telephone. His cross examination, aside for showing various separate cases as aforesaid mentions about the fact that no blood was oozing out from his father's injuries or found on the kitchen floor.

15. The evidence of these two witnesses, the mother and the brother of the accused (being the wife and the son of the deceased) makes out a strong case of motive for the crime. Their evidence has to be collated with regard to the motive. Both the witnesses have deposed about the fact that the accused wanted the partition of the family house as well as the field during the life time of his father. The evidence of P.W.5 shows that he had told his brother that he should not partition the house and the field till the life time of the parents and they should be allowed to cultivate the same. The cross examination of the P.W.5 shows that no notice for partition or a suit demanding partition was filed in any

Court. The accused only demanded partition and used to quarrel with his father whenever he returned to the village on his leave from the Army. If there was neither any notice nor any civil suit filed in Court, none could be settled. The evidence of P.W.5 further shows chapter cases as well as other criminal cases filed by and against the accused. Mention of one chapter case has been made in paragraph no.5 of his evidence. There is a mention of a case filed by the wife against him also. The evidence of P.W.6, the mother only mentions about the quarrel and the demand for partition. Her evidence also does not show any suit for partition being filed by the accused against his father. Her cross examination shows a case at Ajara having been filed and settled between the accused and his parents. That case was compounded, since they had decided not to continue the dispute. A day before the incident they had all gone to Ajara and compounded the case. That was therefore a criminal case. It had nothing to do with partition of family property.

16. The learned Advocate for the Appellant/accused drew our attention to a stray evidence of the I.O. P.W.11 towards the end of his detailed cross examination, showing that his investigation revealed the fact that the accused and deceased had gone together to villages Gadhinglaj and Chinchewadi and returned a distance of 25 Kms walking together. It is

sought to be contended that after the family dispute relating to partition was settled, the father and son happily walked home together, and that if the accused had any intention to kill his father he could have done so during that long walk home. The very effort of showing this aspect is misleading. The evidence of P.W.5 and 6 have shown no litigation for partition. Hence, none could be compromised. Their evidence shows the demand and quarrels for the sake of partition. They, therefore, remained. Whatever could have been compounded and settled was the criminal case. A warrant was served upon the appellant/accused for a case in Ajara Court, as is shown from the evidence of P.W.5. The case in Ajara Court is settled a day prior to the death of the deceased. Hence, it is not a civil suit but another criminal case which is settled. The evidence of P.W.6 shows that they (meaning the parents of the accused) decided not to continue the dispute and accordingly compounded the case. That had nothing to do with giving the accused his share so as to eliminate the motive which is fundamental premise of the prosecution case. Hence, the walk of 25 Kms by the accused and the deceased one night prior to the incident together has also nothing to do with the demand of the accused for partitioning of the property by claiming his share therein. Nothing has been brought on record about what transpired between the father and son during the walk. The motive

shown by the prosecution therefore remains firm. The case against the accused has to be considered keeping in view the said motive which was present at the time of the offence.

17. In the case of Surinder Pal Jain Vs. Delhi Administration, 1993 SCC (Cri.) 1096 brought to our notice by the Advocate for the Appellant himself it has been held that :

> " In a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive, however, puts the court on its guard to scrutinse the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof."

18. Motive is not the only factor. The offence has to be linked to the accused and corroborated by some other evidence, as has been held in the case of Ramchandra Sao Vs. State of Bihar, (2000) 10 SCC, 467. Hence in that case where links/chain of circumstances was missing, it was held that it was unsafe to maintain conviction of the appellants. That was the case in which the appellants who were father and son lived with the deceased who was their daughter-in-law and wife respectively. Allegations relating to certain advances by the father-in-law upon the daughter-in-law in

the absence of the son were found in the prosecution case. The daughter-in-law was found missing and her body was recovered from a well. It was the case of strained relationship between the father-in-law and the daughter-in-law. There were blood stains found in the room of the accused together with the blood stained shawl recovered therefrom and no information relating to the fact that she was missing was reported by the in-laws. This was no other evidence. The fact of suicide by the victim could not be ruled out. Hence, it was held that the links/chain of circumstances were missing, and the accused could not be convicted.

19. It would, therefore, have to be seen whether aside from the existence of motive, the other circumstances in this case lead to none other than the accused.

20. Since the deceased victim was found lying on the floor with his limbs broken and expired that morning, the injuries suffered by the deceased become relevant to consider. The case of the prosecution is that he was beaten to death by a stick wielded by the accused. The evidence of the Doctor P.W.8 shows as many as five fractures to both the arms, the left thigh, as well as the right chest wall of the deceased. There are weal marks also over both the arms, right thigh,

right buttock, as well as the chest wall of the deceased. Further there was contusion and swelling of the left thigh and blood in the right chest wall with injury to the lungs upon fracture to the ribs. There was a contused lacerated wound over left shin of tibia. The evidence of the Doctor further shows internal injuries to the pleura with collection of blood in the pleural cavity and the right lung being torn resulting in bleeding in the right chest wall. These external and internal injuries, which are on all the parts of the body of the deceased, except his head, have been opined to be sufficient to cause death in the ordinary course of nature by the Doctor. The cause of death has been stated by the Doctor in the PM report Exhibit-46 to be hemorrhagic shock due to multiple fractures of long bones and fracture of ribs on right side leading to injury to right lung and excessive bleeding in right chest cavity. The Doctor's cross examination shows shows weal marks caused by the hard and blunt object.

21. The PM examination was carried out at 2.10 pm on the next day. The Doctor's report shows that the death has been taken place 6 hours before the postmortem examination and that rigor mortis sets in 6 to 8 hours after death. This is opinion evidence, given by a Medical Expert. It is inconsistent with the fact that the deceased was found dead

at about 6.00 a.m. Upon the Doctor's evidence it can be seen that the death must have taken place at about 8.00 a.m and rigor mortis would be just beginning to set in at the time of the P.M.Examination. The P.M.Report itself shows that had completely set in. This evidence of fact is inconsistent with the opinion evidence that rigor mortis sets in after 6 to 8 hours as a rule. Upon the evidence about the time of death alone, the contention on behalf of the Accused has been that the entire prosecution evidence by P.W.6 and 7, that the deceased was found dead at 6.00 a.m, is discredited. Acceptance of such contention would be an oversimplification of appreciation of expert evidence. There is nothing produced by the appellant/accused in the cross examination of the Doctor from medical jurisprudence to substantiate this opinion evidence. A mere statement by the Doctor about how many hours are required to set in rigor mortis or that when it would be setting all over the body cannot be accepted per se. This medical evidence of the Doctor may not hold good as a general rule in all cases. It would be prudent to see the Medical Jurisprudence on this aspect itself. Modi's Medical Jurisprudence and Texicology, Twenty-Second Edition, sets out the various aspects of rigor mortis in the chapter relating to “Death in Its Medico-Legal Aspects” at page 228 which deals with Rigor Mortis. The time of onset at page 229 is set out thus:

> *" Time of onset :*
>
> *This varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. In India, it usually commences in one or two hours after death."*

The conditions of muscles and muscular activities before death with regard to Rigor Mortis are set out at page 230, which reads thus :

> *" Muscular Condition and Activity Before Death.*
>
> *The onset is slower, and the duration longer in those cases where the muscles have been healthy and at rest before death than in those cases where the muscles have been feeble and exhausted due to prolonged activity and have less amount of glycogen in the muscles."*

Atmospheric Conditions affecting Rigor Mortis are set out at page 231, thus :

> *" Atmospheric Conditions :*
>
> *Rigor Mortis commences slowly, but lasts for long time in dry, cold air. On other hand, its commencement*

is rapid, and duration short, in warm, moist air. It comes on rapidly and disappears late in bodies immersed in cold water."

Similarly Lyon's Medical Jurisprudence & Toxicology Eleventh Edition refers to the factors affecting Rigor Mortis at page 723. These factors are set out as :

(i) Environmental conditions

The process might set in as fast as an hour after death in warm weather. In such conditions the rigor develops fully within a few hours and might disappear completely within twenty-four hours of death.

(ii) Physical activity prior to death

In cases where severe physical exertion precedes death, the onset of rigor mortis might be hastened.

And

(iii) Physical condition and age

In cases in which, previous to death, the muscles have undergone great fatigue, and after death from any septicaemic condition, rigor sets in early and is of short duration.

Further the said commentary shows that intense physical struggle leads to higher consumption and depletion of

Adenosine triphosphate (ATP) in muscles. In such conditions rigor mortis sets in fast.

The entire body attains peak rigidity in about 6 to 12 hours. The order of disappearance is the same as that of onset.

The commentary further shows that seasonal variation in a country as large as India also results in varying time of rigor mortis. In tropical conditions such as the plains in India and in Southern parts of India, onset may be within thirty minutes to a couple of hours of death; full development achieved in six to twelve hours.

(-Emphasis supplied)

This case took place in the planes of Maharashtra during the month of July. It was therefore during Summer time. Rigor Mortis therefore, need not have taken as long as 6 to 8 hours to set in. It will however, remain all over the body 12 hours after death. It was found all over the body at the time of the P.M.Examination. The reported death could therefore be between 2.00 a.m when rigor mortis could have started until 6.00 a.m when the deceased victim was discovered dead. Upon seeing the Medical Jurisprudence, the death of the deceased as shown in the prosecution case fits perfectly with the oral testimony showing the death of the deceased and the

rigor mortis that set in thereafter.

Consequently the Doctor's evidence about the probable time of death is seen to be incorrect.

The Doctor's evidence further shows that rigor mortis was present all over the body at the time of PM examination. This is an evidence of fact. This fact is, therefore, established. The death, therefore, took place within 12 hours of the PM Report, which was prepared at about 2.00 p.m. Therefore, the fact that the death took place before about 6.00 a.m. Is established. The factum of the death is not challenged by the accused. The evidence of not only the wife of the deceased P.W.6 and the son P.W.5 and also the evidence of the panch who prepared the inquest panchanama shows this fact. In the judgment relied upon by the Advocate for the accused with regard to rigor mortis in the case of Thangavelu Vs. State of Tamil Nadu, (2002) 6 SCC 498 shows the opinion of the Doctor in that case, that in a place like Erode in December the rigor mortis sets in after about 2 to 3 hours after the death. This is the case in District Kolhapur where the death has taken place in July.

22. The prosecution has led evidence of a neighbour who had seen the accused in the house of the deceased in the

middle of that fateful night. The neighbour is examined as P.W.7 who lived in front of the house of the deceased. At about 3.30 a.m on 25th July, 2001, the date of the offence, he had come outside his house to urinate. At that time he saw the accused standing at the door of his house (his father's house) by holding a stick in his hands. At 6.00 a.m, about two and half hours thereafter, he heard a cry from the house of the deceased and saw that he was dead. He was shown the stick recovered in this case at the instance of the appellant/accused, which he identified in the court as being the same stick carried by the accused. His cross examination shows that he had seen the deceased a day before wandering in the village. Despite the streneous effort to dislodge his evidence of being a unique chance witness watching the accused standing with a stick at the door of his house in the middle of the night, his evidence in this regard stands firm. He is, therefore, an independent chance witness. He has last seen the accused on the same night in the house of his father a mere two and half hours before the offence came to be known to him by the wife of the deceased crying out. There is nothing to disbelieve the evidence of this witness. It shows the **"last seen"** theory. The evidence of P.W.6 showing that the deceased had gone to the Court a day before when they had decided not to continue the dispute and compound the case and the evidence of the

Police Inspector P.W.11 showing that his investigation revealed that the father and son had walked home together coupled with the evidence of P.W.7 when the deceased was seen standing at the door of his father's house in the middle of the night shows the progress of the events in the prosecution story. If the accused's demands were settled with regard to partition of the property and he had no other motive to commit any offence upon his father, he would have gone back to the residence where he usually resided, i.e his in-laws' house in the same village a little distance away. It is not even the case of the accused that he lived with his father in his father's house whilst on leave. Nevertheless he was seen therein by the opposite neighbour on the fateful night itself.

23. It is argued on behalf of the appellant/accused that the mere factum of having been last seen together with the deceased also would not prove the prosecution case. Mr. Thorat on behalf of the appellant/accused drew our attention to the case of Dhanajaya Reddy Vs. State of Karnataka, 2001 SCC (Cri.) 652. That was the case in which a husband was alleged to be murdered by the wife and her paramours and the wife was seen with the deceased husband in their house where he was later found dead. It was held that this circumstance by itself cannot prove the

guilt because, being the wife she was supposed to be with her husband in the house. In this case it is not the case of the appellant/accused that he lived in the house of his father whenever he was on the leave from Army. It is an admitted position, brought out in para 5 in the cross examination of P.W.5 itself. Consequently in this case the accused was not expected to be standing at the door of his father's house in the middle of the night. But he was found in such position. The last seen theory is therefore, not the only, but a strong circumstance in this case which would connect the accused with the crime.

24. It is argued on behalf of the appellant/accused that blood of the deceased was not seen on the floor of the kitchen and was not collected and sent for Chemical Analysis. We find no reason why blood should be found in all cases. This is a case of a brutal death with a stick resulting in numerous fractures and internal bleeding. It shows weal marks at various parts of the body. It also shows contusion, swelling and a contused lacerated wound on tibia. Such injuries may not result in a overflow of blood. Nevertheless they may cause hemorrhagic shock. In fact the case of all the witnesses of the prosecution in this regard is without any embellishment and brings out nothing from them except the bare truth. Except for a few marks on the

banian of the deceased which was recovered from his body upon the inquest panchanama being made, no witness has made out a case of large scale bleeding. One spot on the banian, reddish in colour is made out to be a mud stain as deposed by the IO P.W.11. It hardly matters that there was no blood on the floor.

25. The case of the prosecution linking the accused with the crime is the recovery of the stick used by the appellant/accused, seen by the neighbour P.W.7 and identified by him in Court. That stick has been recovered through the panchas P.W.3 and 4.

26. The evidence of P.W.4 shows the accused making a voluntary statement to the IO offering to show the stick in the house of his father-in-law, on 27th July, 2001 after the arrest of the accused. His evidence shows that the accused took out the stick kept behind the door inside his in-laws' house. It is argued that the stick was not sealed and hence the recovery fails. The evidence shows the stick labelled. By its very nature, it being a rod 3.1/2'' long it could not be “Sealed”. The evidence about its recovery cannot be discarded as it was duly labelled.

27. The cross examination of P.W. 4 is made in a bid to

discredit the witness as he was known to the police since he used to supply tea to the police. However, that itself cannot discredit the evidence in view of the stick being found which was produced as an article in Court and which has been identified not only by the said panch but finds its corroboration in the evidence of the Doctor which shows that the injuries of the deceased could be caused by hard and blunt object and were possible with the stick article-10 in this case. It has also been identified by the neighbour P.W. 7, who saw it in the hand of the Accused at 3.30 a.m on the date of the incident. The further cross examination of P.W.4 showing no knowledge of the direction in which the house was facing or how many rooms it had or whether or not there was a courtyard is set at naught by the later evidence that, that house was not searched. The evidence shows clothes hanging for drying in that house. A reading of the evidence thus show the attendance of the panch and the making of panchanama upon the recovery of the weapon used in the offence. The recovery of the stick therefore connects the accused with the crime.

28. Much ado has been made on behalf of the accused showing us the evidence of P.W.3, another panch who was present at the time of recovery of one banian. The panchanama was sought to be proved through P.W.3 as

Exhibit-33 under which only one banian was recovered. However, that panch, in his over enthusiasm, deposed not only about the banian but also one shirt a stick and a half sleeve banian of blue colour. It may be mentioned that all the articles recovered during the investigation being the stick as well as the clothes of the deceased and the accused would be expected to be produced in the Court together. The witness such as the panch would be expected to see the documents available in Court. He therefore, could be mislead by the factum of the production of a number of articles all together. Since this is one such case, we may discard the evidence of P.W.3 all together. The recovery is made in his presence do not matter. The important recovery in this case is of the stick under the panchanama Exhibit-35 dated 27th July, 2001 which is made at the instance of the accused connecting the accused with the crime.

29. The accused was the eldest son of the deceased. If he had settled his dispute with the deceased, as is the main contention on his behalf, he would have had no grievance against the deceased. If that was so, he himself was expected to have raised the hue and cry upon his father, with whom he had no disputes, being murdered in his own house. He did nothing of the kind. He instead absconded and was required to be arrested. That was after a period of time when

the Sarpanch made an announcement in the village that he would not be spared. He was found at an unearthly hour at the door of his father's house with a stick in his hand by an independent chance witness. He was last found with the deceased in the house of the deceased in which he admittedly did not ordinarily reside. In these circumstances he is required to explain his absence.

30. When we raised this query about his conspicuous absence and called upon his Advocate to show how the Accused has explained such a surprising factor, he argued that it was not for the appellant/accused to explain. He relied upon the case of Akhilesh Hajam Vs. State of Bihar, 1995 SCC (Cri.) 883, in which it has been held that emotional considerations cannot take the place of proof. Indeed they cannot. That was the case in which no motive to commit the murder was made out by the prosecution. The accused was not found in the house where the murder of his relative has been taken place but was found roaming in the village. It was observed that that could be for more than one reason and that mere absence without motive could not link him to the crime.

31. In the case of Narendra Singh Vs. State of M.P., 2004 SCC (Cri.) 1893 the dead body of the wife found in the

kitchen could not be linked with the accused who closed the door and sneaked out of the house. In the facts of that case no offence was connected to the accused and hence mere suspicion was held not to take the plea of proof.

32. The reliance is placed on behalf of the accused upon the Judgment in the case of Arjun Marik Vs. State of Bihar, 1994 SCC (Cri.), 1551. That is the case when the only circumstance against the accused was that he was last seen with the victim. It was held that only such a circumstance could not complete the chain of circumstances compounding to the guilt of the accused and therefore, no conviction on that basis alone can be found.

33. This is not one such case. In this case the prosecution has established the chain of evidence completely. There is no reasonable ground for a conclusion consistent with the innocence of the accused. He was last seen in his father's house and was not seen or heard of after the other villagers came to know about the crime and never returned to his father's house.

34. The fact that in a case such as this, the accused must explain his absence has been laid down by the Supreme Court in the case of Subramani Vs. State of Tamil Nadu,

(2003) 10 SCC, 185. It has been held in that case that when the accused was last seen together with the deceased who was raped and murdered and her body was found at the place where the accused and she were last seen together, the accused not being found in his house after the incident showed that he had no acceptable explanation for his absence. It was observed that the accused had no explanation as to when and how he parted company with the deceased. The burden shifted on the accused to explain such circumstance. The only case of denial led to the only inference about his guilt. Consequently in that case the conviction was maintained. This is a case of a strong motive coupled with the fact that the accused was last seen at the house of the deceased. The complete non-explanation of the absence of the accused thereafter nails the guilt upon him.

35. This is, therefore, the case in which the evidence of the prosecution is manifold. It extends over the following distinct areas :

(i) The motive to commit the offence being the desire to get the father's property partitioned during the life time of the father which has not been done by the father until his death.

(ii) The accused admittedly being on leave and residing in the same village at his in-laws house.

(iii) The compounding of the criminal case alone filed by the parents and pending against the accused which they decided not to proceed.

(iv) The fear in which his mother lived until the last day refusing to come to her own matrimonial home with her husband and opting to stay over night in the house of her married daughter instead, the deceased being all alone throughout the night in his house.

(v) The accused having gone with the deceased to the nearby village a day before for the criminal case which was between the parties.

(vi) The accused having walked home with his father.

(vii) The accused having been seen by the neighbour in the middle of the night standing at the door of his father's house where he did not reside during the entire period of his leave.

(viii) The father having suffered multiple fractures, weal marks and other internal injuries caused by a hard and blunt object like a stick.

(ix) The stick having been recovered at the instance of the accused from the house in which he lived being his in-laws house.

(x) That stick being identified in Court by the panch in whose presence it was recovered, by the neighbour who saw the Accused carrying it in his hand in the middle of the night, and by the Doctor who opined that the injuries in this case would be caused by such a weapon.

(xi) The P.M. Report showing the time of the death evidenced by rigor mortis at about 2.00 a.m which is compatible with the factum of the accused being in the house of the deceased during the night as seen by the neighbour.

(xii) The accused not being found in the morning and had to be arrested later on in the evening after the Sarpanch made an announcement that he should be brought to justice.

36. This is therefore, not the case of a murder to be proved by merely circumstantial evidence and the discovery of a stick by a panch who faultered in Court as has been sought to be made out by the Advocate for the appellant. All the aforesaid circumstances together show an unmistakable link to the accused.

37. The learned trial Court has correctly martialled the evidence and came to the right conclusion of the guilt of the accused. His conviction under Section 302 IPC is correct. The sentence of life imprisonment and payment of fine of Rs.10,000/- and i/d RI for 3 months is maintained.

38. The Appeal is dismissed.

(SMT.ROSHAN DALVI, J.) **(SHRI. D.G.DESHPANDE, J.)**